

REMARKS

Reconsideration and withdrawal of the rejections of the claimed invention is respectfully requested in view of the amendments, remarks and enclosures herewith, which place the application in condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1, 4-14 and 18-24 are pending in this application. No amendments to the claims have been made.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

VII. THE 35 U.S.C. 103(a) REJECTION HAS BEEN OVERCOME

Claims 1, 4-14 and 18-24 were rejected as allegedly being obvious by Paul (US 5,556,030 -"Paul") The applicants request reconsideration of this rejection for the following reasons.

Except for some minor amendments to claims 21 and 22 and the addition of claim 24, the present claims are the essentially the same claims which were considered by the Examiner after the applicants filed their response of 28 November 2008. The applicants' response was for the Office Action mailed on 28 July 2008 which include a rejection of claims 1, 2, 4-14, 16 and 17 over the same Paul reference.

In response to the applicants' 28 November response, the rejection over Paul was withdrawn. As the present rejection over Paul is essentially a cut and paste of the earlier rejection, the applicants repeat their arguments from their 28 November response and provide additional comments afterwards.

While the applicants disagree with the characterization of the Paul reference in the final rejection, the above amendments to claim 1 have been made in order to advance prosecution. The applicants reserve the right to further pursue the scope of the originally filed claims in a continuing application.

Arguments from 28 November 2008 reply

Paul differs from the applicants' claims as amended in that Paul does not teach or suggest that the reservoir is covered on its top face with a layer of material impermeable to the volatile substances, i.e. what is being interpreted as being equivalent to the applicants' first control element from within the Paul reference is on ***both sides*** of Paul's reservoir; elements (50) and (55) are mirror images which surround the "reservoir" in the teachings of Paul and are both permeable membrane layers.

Paul also differs from the applicants' claims in that there is no teaching that there is joint action between the first and second control elements of the applicants' claimed dispenser to control the dispensation of the at least one volatile substance. The user in Paul, even when accepting the position that element (22) of Paul is a control element, controls the dispensation of the volatile substance by pulling off the sealing strips, i.e. only the first control element in Paul has any effect in dispensing the volatile substance.

In contrast, for the applicants' claimed dispenser, the second control element acts as a means for controlling the size of the surface of the first control element and as such the dispensing of the volatile substance is a result of a joint action between the first and second control elements.

Further still, Paul does not teach or suggest that:

- (1) the second control element is open-pore foam or is a web material (claims 18 and 19);
- (2) the second control element is uncovered in new claim 23 unlike the "control element" of Paul (The assertion presented in the "Response to Arguments" section of the final rejection which stated that element (22) of Paul is a "control element" is believed to be in error. However, even the final rejection acknowledges that such an assertion is true only when combined with the flap (51) of Paul which has to be removed to dispense the scent.)

Therefore, the applicants' claims as amended are not obvious as all of the applicants' claimed elements are not taught and suggested by the Paul reference.

Additional comments

1. The statement in the Office Action that the Paul dispenser comprises a reservoir "wherein in first control element is a pressure-sensitively adhesive" (Page 2, line 7-6 from bottom) is

incorrect. The "first control element 50" is a permeable membrane layer. See col. 11, lines 23-31 of Paul:

“By constructing permeable membrane 50 in the manner consistent with the molecular structure of the air freshening/deodorizing composition being employed, the rate of dispersion of the air freshening/deodorizing composition into the ambient air is precisely controlled automatically. Furthermore, the use of permeable membrane 50 assures a continuous, dependable and completely repeatable rate of dispersion of the air freshening/deodorizing composition into the ambient surroundings.”

There is no disclosure in Paul that this control element is a pressure-sensitive adhesive.

2. The number of gaps in the second control element is not simply a matter of design choice as asserted in the Office Action, but is essential for determination of the degree of coverage of the first control element and thereby controlling the predetermined release rate of the volatile substance.

3. As there appears to be no further advancement in the prosecution of this application, if the claims are not allowed in the next Office communication, there is a likelihood that the next response would be an Appeal of any further rejection of the claims. However, if the Examiner has any suggestions for placing the claims in condition for allowance, he should feel free to contact the undersigned to further discuss.

CONCLUSION

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution. The Commission is authorized to charge any fee occasioned by this paper, or credit any overpayment of such fees, to Deposit Account No. 50-0320.

Respectfully submitted,
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